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**THIS DISPOSITION
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Paper No. 12
EJS

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Pride Health Care, Inc.**

Serial No. 75/377,494

Charles N. Quinn of Saul Ewing, LLP for Pride Health Care, Inc.

Barney L. Charlon, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Seeherman and Hohein, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Pride Health Care, Inc. has appealed from the final refusal of registration of the mark HOW A POWER CHAIR SHOULD FEEL for "powered wheelchairs and powered wheelchair bases for use principally by elderly, infirm or disabled persons."¹ Registration has been refused pursuant to

¹ Application Serial No. 75/377,494, filed October 22, 1997, based on an asserted bona fide intention to use the mark in commerce. Applicant amended its identification of goods to that stated above in its response filed October 12, 1999. That amendment contains a typographical error, in which "bases" was incorrectly written as "basis." The identification, however, has been corrected in the Office records.

Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark POWERCHAIR, previously registered for "collapsible electrically operated wheelchair,"² that, if used on applicant's identified goods, it would be likely to cause confusion or mistake or to deceive.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Our determination is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E. I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

In this case, the goods are, in part, legally identical, and otherwise closely related. As identified, applicant's powered wheelchairs for use principally by elderly, infirm or disabled persons are encompassed within the collapsible electrically operated wheelchairs identified in the cited registration. The respective

² Registration No. 2,084,661, issued July 29, 1997.

goods, being identical, would be sold within the same channels of trade to the same classes of customers, which would include those members of the general public who would purchase a wheelchair for their own use or that of a family member.

This brings us to a consideration of the marks, including the general principle that, "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant contends that its mark is sufficiently different in sound, appearance and commercial connotation so as to distinguish it from POWERCHAIR. Applicant points particularly to the fact that its mark consists of six words, while the cited mark is one word. Applicant also asserts that its mark "provides a distinctive impression regarding both the high quality of goods provided by Applicant and the effect of use of those goods on consumers."

Obviously, there are differences between the marks, in that applicant's mark begins with the words HOW A and ends

with SHOULD FEEL, which are words not present in the cited mark. However, a determination of likelihood of confusion is not made on a purely mechanical basis, counting the number of words, or even letters, that are similar or different. It is well established that in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. **In re National Data Corp.**, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

We agree with the Examining Attorney that POWER CHAIR is the dominant portion of applicant's mark, and that the other words relate to this central portion, which is the focus of the phrase. Moreover, we find that consumers familiar with the registrant's mark POWERCHAIR for electrical wheelchairs are likely to assume, upon seeing the phrase HOW A POWER CHAIR SHOULD FEEL for the same goods, that the wheelchairs emanate from the same source, and that HOW A POWER CHAIR SHOULD FEEL is a slogan mark adopted and used by the entity which sells the POWERCHAIR wheelchairs.

In reaching this conclusion, we have considered applicant's argument that the cited mark POWERCHAIR is descriptive, and is entitled to less protection than an arbitrary or fanciful mark. To the extent that applicant seeks to collaterally attack the cited registration, that is clearly not permissible.³ However, even if we treat applicant's argument as asserting that POWERCHAIR is highly suggestive of, rather than descriptive for, electrically operated wheelchairs, the additional words in applicant's mark are not sufficient to distinguish it from the registrant's. The differences in applicant's mark do not change the impact of the word POWER CHAIR; rather, as stated above, consumers would regard applicant's mark as a variant of the registrant's mark, a slogan mark used by the same entity which provides POWERCHAIR wheelchairs.

Decision: The refusal of registration is affirmed.

³ We would also point out that the cited mark is registered on the Principal Register, without resort to Section 2(f).